

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARGUERITE CARRUBBA

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1238

**HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
KARLE STOLZE, WILLIAMS PRIEST, JAMES A.
GONDLES, JR. AMERICAN CORRECTIONAL
ASSOCIATION; JOHN AND JANE DOES 1-3;
HEALTH ASSURANCE LLC AND J. L. WHITE**

DEFENDANTS

**DEFENDANT, GEORGE PAYNE'S MOTION IN LIMINE NO. 11
TO BAR EVIDENCE, TESTIMONY AND REFERENCE TO
VARIOUS SUBSEQUENT REMEDIAL MEASURES**

COMES NOW, Defendant, Sheriff George Payne, in his official capacity, by and through his attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and moves this Honorable Court *in limine*, for an order barring evidence, testimony and reference to various subsequent remedial measures. In support thereof, Defendant states as follows:

1. Defendant respectfully moves this Court to bar Plaintiff from offering any evidence, testimony and reference to various subsequent remedial measures performed by the administration and/or employees at the HCADC; including but not limited to this Defendant's request and corresponding report (See Exhibit "1") to the National Institute of Corrections in the later part of 2006, and testimony from current/former wardens, sheriffs, correctional officers, etc., pursuant to Fed. R. Evid. 401 and 402, being irrelevant to the claims before the Court. The effect of this

evidence is prejudicial and outweighs its probative value and should be excluded pursuant to Fed. R. Evid. 403. Lastly, evidence, testimony and references to various subsequent remedial measures is inadmissible pursuant to Fed. R. Evid. 407.

WHEREFORE, PREMISES CONSIDERED Defendant, George Payne respectfully requests this Court to enter an Order granting this Motion in Limine and respectfully requests the Court to enter an Order as follows:

- A) Directing the Plaintiff through their respective counsel, and counsel individually, not to mention, refer to, interrogate concerning, voluntarily answer, or attempt to convey before the jury whether orally or through a document, at any time during these proceedings, in any manner, either directly or indirectly, the subject matters as stated above without first informing the Court and obtaining permission of the court outside the presence and hearing of the jury;
- B) Instructing the Plaintiff, through their respective counsel, and counsel individually, not to make any reference or inference to the fact that this motion has been filed, argued or ruled upon by this Court; and
- C) Instructing Plaintiff and Plaintiff's attorney to warn and caution each and every witness appearing in their phase of this litigation to strictly comply with the Court's ruling.

RESPECTFULLY SUBMITTED, this the 28th day of July, 2010.

**GEORGE PAYNE, JR., IN HIS OFFICIAL CAPACITY
ONLY, Defendant**

DUKES, DUKES, KEATING & FANECA, P.A.

BY: /s/Cy Faneca
CY FANECA

CERTIFICATE OF SERVICE

I, CY FANECA, do hereby certify that I have this day electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Patrick R. Buchanan
Steven B. Dick
Mark Watts
Brown Buchanan
P.O. Box 1377
Biloxi, MS 39533
Attorneys for Plaintiff

Tim C. Holleman
Boyce Holleman & Associates
1720 23rd Avenue
Gulfport, MS 39501
Attorney for Harrison County

James L. Davis
Ian A. Brendel
Jim Davis, P.A.
P.O. Box 1521
Gulfport, MS 39502
Attorneys for Morgan Thompson

This, the 28th day of July, 2010.

s/CyFaneca
CY FANECA

Cy Faneca, MSB #5128
Joe Gewin, MSB #8851
Haley N. Broom, MSB #101838
DUKES, DUKES, KEATING & FANECA, P.A.
2909 13th St., Sixth Floor
Post Office Drawer W
Gulfport, Mississippi 39502
Telephone: (228) 868-1111
Facsimile: (228) 863-2886
cy@ddkf.com
jgewin@ddkf.com
hbroom@ddkf.com